

REMARKS

Claims 1-10 are pending in the application.

Claims 1, 2, 4, and 5 stand rejected under 35 USC 103(a) as being unpatentable over Weissman (USPN 6,449,477 B1) in view of Shyy (USPN 6,178,334 B1), and claims 3 and 6-10 stand rejected as being unpatentable over Weissman in view of Shyy and further in view of Bassirat (USPN 6,0878,003). Applicant respectfully traverses these rejections.

Applicant argued in the previous response that no motivation or suggestion for combining is given for combining the teaching of Shyy with the teachings of Weissman. This argument was deemed as not persuasive in the current final Office action. The reason given in the final Office action for the argument as being unpersuasive was that "both references are analogous" and therefore it would be obvious to combine their respective teachings.

Applicant submits that references being "analogous" is not the test for whether it is proper to combine the teachings of the references. As stated in MPEP Section 2143.01, to properly combine teachings of different references, there must be some suggestion or motivation in the references to combine the teachings. In contrast, "analogous" is a test as to whether a reference can be used as prior art (see MPEP Section 2141.01(a), not whether the prior art references can be properly combined.

Applicant respectfully requests that the Examiner provide the suggestion or motivation for combining that is found in the references, or withdrawal the rejection in the next Office action.

If there are any fees due in connection with the filing of this response, please charge such fees to our Deposit Account No. 17-0026. If a fee is required for an extension of time under 37

[000298C1; 09/892,365]

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